IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5842 of 1997

For Approval and Signature:

HONOURABLE MS.JUSTICE H.N.DEVANI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ABDULKARIM ALIBHAI CHAUHAN - Petitioner(s)

Versus

STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :

MR ANSHIN H DESAI for Petitioner
MS DARSHNA S. PANDIT, AGP for Respondents : 1 - 3.

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CORAM : HONOURABLE MS.JUSTICE H.N.DEVANI

Date : 07/09/2005

ORAL JUDGMENT

1.By way of this petition under Article 226 of the Constitution of India, the petitioner challenges the order/letter dated 28th April 1997 passed by the Collector, Junagadh (Annexure “K”), whereby the

petitioner has been informed that his application for regularisation of encroachment has been rejected by the State Government.

2. The facts stated briefly are that, by an order dated 26th April, 1978 of the City Survey Superintendent, Prabhas-Patan, Junagadh, the petitioner had been granted lease in respect of land admeasuring 23.78 sq. mtrs. situated on the south of city survey No.516 at Block No.C of Prabhas Patan of Veraval Taluka on an annual basis. The aforesaid lease was extended by an order dated 26th November, 1978. It appears that thereafter, despite the aforesaid lease having come to an end, the petitioner continued to occupy the said land unauthorizedly, hence, the City Survey Superintendent & Additional Mamlatdar, Prabhas Patan, initiated proceedings under Section 61 of the Bombay Land Revenue Code (the Code), being Encroachment Case No.90/1989-90. By an order dated 22nd June, 1990, penalty was imposed upon the petitioner under Section 61 of the Code, and the petitioner was directed to remove the encroachment on the said land.

3. The petitioner paid the penalty and made an application

for regularisation of the encroachment on the above mentioned land. However, by an order dated 22nd August 1991, the Deputy Collector, Veraval rejected the said application on the ground that regularisation of encroachment would result in the road becoming narrow and consequently would cause hindrance to the traffic.

4. The petitioner carried the matter in appeal before the Collector, Junagadh, who for the reasons stated in his order dated 31st December 1991, rejected the appeal and confirmed the order of the Assistant Collector, Veraval.

5. The petitioner carried the matter in revision before the Secretary (Appeals), Revenue Department, Government of Gujarat. By an order dated 7th September 1993, the Secretary (Appeals) allowed the revision application and set aside the order dated 31st December 1991 passed by the Collector, and directed the Collector to take necessary steps in accordance with law to regularise the encroachment by the petitioner.

6. It appears that despite the aforesaid directions, the Collector did not regularise the encroachment. However,

by the impugned order/communication dated 28th April 1997, the petitioner was informed that the petitioner had encroached upon the subject lands for residential purpose, however, he was using the same for commercial purpose. That the encroached lands form part of a road and regularisation of the same would result in narrowing down the road. Hence, pursuant to a proposal made to the Government in this regard, by a communication dated 31st January 1997 of the Revenue Department, Government of Gujarat, the petitioner's application for regularisation has been rejected.

7. It is this communication/order dated 28th April 1997 which is subject matter of challenge in the present petition.

8. Heard Mr.Anshin H. Desai, the learned advocate for the petitioner and Ms.Darshna S.Pandit, the learned Assistant Government Pleader on behalf of the respondent authorities.

9. Mr.Desai has submitted that, upon grant of lease, a Sanad had been issued in favour of the petitioner under the provisions of Section 133 of the Code. That the

City Survey Superintendent had, by a communication dated 2nd January 1990 (Annexure “C”), opined that regularisation of the encroachment by the petitioner would not cause any hindrance on the road. That, the Town Planning Officer, Junagadh had, by a communication dated 20th November 1990, fixed the market value of the said land at Rs.180/- per sq. mtr. That, despite the aforesaid opinion of the City Survey Superintendent, the Deputy Collector had, by the order dated 22nd August 1991, rejected the application of the petitioner, and that the Collector had rejected the appeal preferred by the petitioner against the said order. It was submitted that the Secretary (Appeals) had, after taking into consideration the Government resolution dated 8th January 1980 which makes provision for regularising encroachments in cases where possession had been retained after expiry of lease; as well as considering the merits of the case, had allowed the revision application of the petitioner. That, the Secretary (Appeals) had further been pleased to direct the Collector to regularise the encroachment and to pass necessary orders in accordance with law within a period of one month. It was contended that the said order had not been challenged by the respondent State

authorities, and had, therefore, attained finality, hence, the Collector was bound to abide by the said order and comply with directions issued by the Secretary (Appeals).

10. The learned advocate further submitted that, upon perusal of the impugned communication / order, it is evident that the application of the petitioner has been rejected by the State Government. However, the petitioner was not aware of any such proceedings before the State Government, as the said order had been passed without issuing notice to the petitioner and without giving him any opportunity of hearing. The learned advocate contended that it is settled legal position that the State Government has no power to review its own order, hence, the order dated 31st January, 1997 of the State Government, which is referred to in the impugned communication, is void as being without jurisdiction. In support of his contention, the learned advocate relied upon the decision of a Division Bench of this Court in case of Bhagawanji Bawanji Patel v. State of Gujarat, reported in [1971] XII GLR 156 wherein it has been held that the State Government has no power to re-revise or review its order passed under

the provisions of Section 211 of the Code.

11.The learned counsel has also relied upon the decision of this Court in case of Jayantibhai Naranbhai Amin v. State of Gujarat, reported in AIR 2002 GUJARAT 193, which has subsequently been confirmed by a Division Bench of this Court by a judgement and order dated 7th April, 2003 in Letters Patent Appeal No.292 of 2002, as well as order dated 4th February 2005 passed in Special Civil Application No.15700 of 2004 and order dated 22nd August 2005 passed in Special Civil Application No.14524 of 2005, to contend that this Court has held that the market value of the land is required to be determined at the rate prevalent at the time of making the first application. The learned advocate, however, has fairly submitted that, in view of the statement made at the bar, as recorded by this Court vide order dated 18th April 1998, that the petitioner was willing to pay the market value of the subject lands as prevailing in September 1993, the day on which the Secretary (Appeals), Revenue Department had passed the order dated September 7, 1993 in favour of the petitioner, the petitioner would abide by the same.

12.Ms.Darshna Pandit, the learned Assistant Government Pleader has vehemently defended the impugned communication. It was submitted that the regularisation of encroachment in favour of the petitioner would result in narrowing down of the public road, hence, the State Government was perfectly justified in considering the proposal of the Collector, and rejecting the application made by the petitioner.

13.As can be seen from the order dated 22nd August 1991 of the Assistant Collector, Veraval and the order dated 31st December 1991 of the Collector, Junagadh, the application of the petitioner had been rejected on merits on the ground that the regularisation of the encroachment would result in causing hindrance on the public road. The Secretary (Appeals), in the exercise of his revisional powers under Section 211 of the Code, after considering the factual position and considering the application on merits, had quashed and set aside the order of the Collector, Junagadh, and had directed the Collector to regularise the encroachment after charging the market price in accordance with the rules and to pass necessary orders in accordance with law within a period of one month from the date of the

order. It is an admitted position that the said order dated September 7, 1993 has not been carried further by the respondent authorities and that the same has attained finality. Hence, the Collector was duty bound to abide by the said order. In case the Collector was aggrieved by the said order, it was open to him to challenge the same by way of filing appropriate proceedings before the appropriate forum. However, it appears that, instead of challenging the said order, the Collector had made a proposal to the State Government, and the State Government vide letter No. Encroachment–1696–2776–2 dated 31st January 1997, has rejected the application of the petitioner for regularisation of encroachment.

14. In view of the fact that there is an order of the Secretary (Appeals) as the last fact finding authority, in favour of the petitioner, it is not necessary to enter into the factual controversy involved in relation to the application for regularisation made by the petitioner. The respondents appear to have accepted the said order, as nothing has been placed on record to point out to the contrary. Hence, the only issue that is required to be considered is as to whether there can

be two orders of the State Government in respect of the same issue, one in the exercise of quasi-judicial powers under Section 211 of the Code, and the other in the exercise of its executive powers.

15. From the facts emerging from the record, it is evident that the proceedings pursuant to the application for regularisation of encroachment made by the petitioner, culminated in the order dated 7th September, 1993 passed by the Secretary (Appeals). Thereafter, no application for regularisation in respect of the subject matter was pending before the State Government. It is, therefore, not clear as to which application has been rejected by the State Government. If it is the case of the State authorities that the said order of rejection is made in respect of the same application, which had culminated into the aforesaid order dated 7th September, 1993, then the said action, in no uncertain terms, amounts to total abuse of powers on part of the State Government. The State Government, under the guise of exercise of powers of its administrative powers, cannot take away the relief granted in favour of a citizen by a quasi-judicial authority in the exercise of its statutory powers.

16.Ms.Pandit, the learned Assistant Government Pleader had been directed by the Court to produce the proposal made by the Collector as well as communication dated 31st January, 1997 which forms the basis of the impugned order/letter dated 28th April 1997. Accordingly, the learned Assistant Government Pleader has placed on record the proposal dated October 1996 made by the Collector to the Revenue Department, wherein it has been stated that, pursuant to the directions of the Secretary (Appeals), the City Survey Superintendent had made an inquiry and found that the land was being used for the purpose of running a flour mill, whereas the revision application had been allowed for regularising the encroachment made for residential use, hence, request was made to reject the application for regularisation. Pursuant to the said proposal, by a communication dated 31st January 1997, the Section Officer, Revenue Department informed the Collector that the request of the petitioner for regularisation of encroachment cannot be accepted, and that, therefore, steps be taken in accordance with law to remove the encroachment in question. Pursuant to the aforesaid communication, the Collector had vide the impugned

letter dated 28th April 1997 informed the petitioner accordingly.

17.The order of the Secretary (Appeals) under the provisions of Section 211 of the Code was passed on 7th September, 1993 whereby the Collector was directed to pass necessary orders for regularisation of the encroachment within a period of one month. The Collector, instead of complying with the said directions of the higher authority, after an inordinate delay of almost three years, giving a complete go-bye to the statutory provisions, made a proposal for rejecting the application which had already been granted in the exercise of powers under Section 211 of the Code. Acting upon the said proposal, the State Government rejected an application which was not even pending before it.

18.Upon perusal of the letter dated 31st January 1997, it is evident that it is in the nature of administrative instructions issued by the State Government. However, what is sought to be done by the said administrative instructions is to review/set aside the order dated 7th September, 1993 passed by the Secretary (Appeals) in

the exercise of powers under Section 211 of the Code. It is settled legal position, as pointed by the learned advocate for the petitioner that the Government cannot review or revise its orders passed in the exercise of Section 211 of the Code. In the present case, the communication dated 31st January, 1997 is not even an order of review of the earlier decision of the Secretary (Appeals). The said order/letter dated 31st January 1997, appears to have been passed in complete disregard of the statutory provisions and settled legal principles, in that an order passed by a quasi-judicial authority in the exercise of statutory powers can be overruled only by a higher forum before which the said order is challenged. The State Government while discharging its administrative functions has no authority to pass orders which have the effect of overruling an order of the State Government passed in the exercise of statutory powers of revision conferred upon it by the Code. The order of the quasi-judicial authority cannot be set at naught by an administrative order. It is always open to an aggrieved party to challenge any order passed by a quasi-judicial authority before the higher forum. However, if the aggrieved party does not challenge the same, the said

order attains finality and the parties are bound to abide by the same. In the present case, the State authorities have not chosen to challenge the order passed by the Secretary (Appeals) before the appropriate forum and the said order has attained finality. However, the State Government, in a highhanded manner and in blatant disregard of the provisions of law, vide the impugned communication dated 31st January 1997, which was communicated to the petitioner by the Collector vide letter dated 28th April 1997, has in effect overruled the order passed by the Secretary (Appeals). Such an action on the part of the State authorities cannot be countenanced even for a moment.

19. The Collector is bound by law to abide by the order of the Secretary (Appeals) and cannot take shelter behind any so called communication of the Revenue Department, to act contrary to the directions contained in the order dated 7th September, 1983. The order/letter dated 31st January 1997 of the State Government is illegal, void and non-est, and has no validity in the eyes of law.

20.In the circumstances, the impugned communication dated 28th April 1997 as well as the communication dated 31st January 1997 of the Government are held to be without jurisdiction, and hence, ab-initio null and void, and are hereby quashed and set aside.

21.In the result, the petition is allowed. The Collector, Junagadh is directed to comply with the order dated 7th September, 1993 passed by the Secretary (Appeals), Revenue Department within a period of one month from the date of receipt of a copy of this order. The Collector, shall determine the market value of the subject land at the rate prevailing as on the date of the order of the Secretary (Appeals) i.e., 7th September, 1993. The petitioner shall abide by the undertaking dated 10th August 1998 filed by him, and shall use the subject land solely for residential purpose and not for commercial purposes. Rule is made absolute accordingly. In the facts and circumstances of this case, it is deemed fit to direct the respondents to bear the costs of the petition which are quantified at Rs.2,500/-.

[HARSHA DEVANI, J]

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